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14 CLE

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 JENNIFER OSBELT,

18 Plaintiff(s);

19 v.

20 DAVID D. McDONALD, DONNA K.
21 McDONALD, and DOES 1-10, inclusive,

22 Defendant(s).

Case No. CV 08-0534 PJH

**JOINT CASE MANAGEMENT
STATEMENT**

Date: May 22, 2008

Time: 2:30 p.m.

Dept: Courtroom 3, 17th Fl.

23 DAVID D. McDONALD; DONNA K.
24 McDONALD; NATIONAL EXPERT
25 WITNESS NETWORK, a California Limited
26 Liability Company; TECHNOLOGY CLE, a
27 California Limited Liability Company,

28 Cross-Complainants,

v.

JENNIFER OSBELT, individually and doing
business as PALO ALTO TECHNICAL, and
DOES 1-10, inclusive,

Cross-Defendants.

Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rules 16-8 and 16-9, Plaintiff Jennifer Osbelt ("Plaintiff"), and Defendants and Cross-Complainants David D. McDonald, Donna K. McDonald, National Expert Witness Network and Technology CLE ("Defendants"), respectfully submit their Joint Case Management Conference Statement and Rule 26(f) Report.

I. DESCRIPTION OF THE CASE

A. Procedural History

A Complaint was initially filed by Jennifer Osbelt in the Superior Court of California, County of San Mateo on June 5, 2007, Case No. CIV 463528 entitled *Jennifer Osbelt v. David D. McDonald, Donna K. McDonald, National Expert Witness Network, a California Limited Liability Company and DOES 1-10, inclusive*. An Answer to Complaint and Cross-Complaint for Interference with Prospective Economic Advantage, Fraud, Breach of Fiduciary Duty, Slander Per Se and Libel Per Se were filed by David McDonald, Donna McDonald, National Expert Witness Network and Technology CLE against Jennifer Osbelt and Palo Alto Technical on July 18, 2007. An Answer to Cross-Complaint was filed by Jennifer Osbelt on August 22, 2007; no answer was filed by Cross-Defendant Palo Alto Technical. A First Amended Complaint was filed by Jennifer Osbelt on December 4, 2007, alleging (1) Breach of Contract-Agreement of Sale; Breach of Contract-Operating Agreement; Breach of Fiduciary Duty, Accounting; Slander Per Se; Violations of the Beverly-Killea Limited Liability Company Act §§ 17058, 17106; Corporate Waste; Abuse of Control; Conversion; Cancellation of Instrument/Restitution Based on Rescission; Unjust Enrichment and Alter-Ego Liability. An Answer to First Amended Complaint was filed on January 8, 2008. A mediation was conducted with Hon. Eugene McDonald (Ret.) of JAMS on January 10, 2008. The parties were unable to resolve their dispute through the mediation process.

Defendants filed a removal of the action to U.S. District Court on January 24, 2008 based upon testimony given during Ms. Osbelt's depositions in January 2008 which they contend indicates that an ERISA claim was part of her First Amended Complaint. Plaintiff disagrees with Defendants' basis for removal and contests that this Court has jurisdiction to adjudicate the matter (see Section "E" Motions).

1 **B. Events Underlying The Action**

2 The Complaint and Cross-Complaint arise out of David McDonald, Donna McDonald,
3 ("the McDonalds") and Plaintiff's ownership of a company called National Expert Witness
4 Network ("NEWN"). NEWN is a California Limited Liability Company who provides experts
5 and consultants with decades of professional experience, technical skills and expertise in high
6 technology discipline to law firms whose clients require the use of expert witnesses in litigation.

7 NEWN was formed in 2002 by David and Donna McDonald. On or about May 13, 2004,
8 Osbelt joined NEWN as a 25% owner and signed the NEWN Operating Agreement and Articles
9 of Organization (the "Operating Agreement").

10 The company operated successfully and the partners worked well together until early
11 2007, when a dispute arose between Osbelt and David McDonald. The personal relationship
12 between the parties deteriorated thereafter, and both parties agreed that the best course of action
13 was for the McDonalds to purchase Osbelt's interest in NEWN. Thereafter a further dispute
14 arose between the parties regarding whether an agreement had been reached to purchase Osbelt's
15 interest in NEWN. Following this dispute over the buyout, Osbelt contends that the McDonalds
16 have taken actions designed to dilute and harm her interest in NEWN; specifically, Osbelt
17 contends the McDonalds have improperly taken profits from the company, engaged in self-
18 dealing and changed the Operating Agreement without her consent to allow them to take action
19 detrimental to her ownership interest in NEWN. The McDonalds contend that Osbelt took
20 actions designed to harm the worth of NEWN, specifically allowing a line of credit to go into
21 default and abandoning loan applications.

22 **C. Principal Factual and Legal Issues In Dispute**

- 23 a) Whether Defendants made an offer to Osbelt to purchase her shares of NEWN.
24 b) Whether Osbelt accepted an offer by Defendants to purchase her shares in NEWN.
25 c) Whether any "agreement" was rescinded because of a unilateral or mutual mistake.
26 d) Whether Defendants breached the agreement, if any, to purchase Osbelt's interest in
27 NEWN.
28

1 e) Whether the McDonalds have violated the Beverly-Killea Act, California Corporations
2 Code, and other duties owed Osbelt as a minority member of the NEWN LLC.

3 f) Whether Osbelt breached her fiduciary duty by failing to sign the US Bank loan,
4 leading to a default.

5 g) Whether Osbelt fraudulently submitted false and duplicative expense reimbursements.

6 h) Whether Osbelt breached her fiduciary duty by abandoning NEWN's patent
7 applications.

8 i) Whether Osbelt interfered with NEWN's ability to proceed with its patent application
9 and approval.

10 j) Whether Osbelt made defamatory comments to third parties regarding the McDonalds
11 and their actions regarding Osbelt's 401(k) and profit sharing plan.

12 **E. Motions**

13 Plaintiffs Motion for Remand to State Court and Motion for Attorneys Fees is
14 currently scheduled for May 21, 2008.

15 **II. AMENDMENT OF THE PLEADINGS**

16 The parties do not anticipate an amendment of the pleadings at this time.

17 **III. DISCOVERY**

18 **A. Evidence Preservation**

19 The parties have taken steps to preserve evidence in this case.

20 **B. Rule 26(a)(1) Disclosures**

21 Should Plaintiff's motion for remand be denied, the parties have stipulated,
22 pursuant to Federal Rule of Civil Procedure 26(a)(1), that they make initial disclosures
23 within 15 days of the Court's Order..

24 **C. Discovery Completed to Date**

25 In the superior court action, the Plaintiff and Defendants propounded and
26 responded to Requests for Admission, Form Interrogatories, Special Interrogatories and
27 Demands for Production of Documents; they have produced documents, and the
28 depositions of the parties have been taken.

D. Anticipated Discovery

1. Prior to trial, Plaintiff anticipates limited discovery, including the depositions of several third party witness related to Defendants' counterclaims.

2. Prior to trial, Defendants anticipate significant additional discovery is needed to assess Plaintiffs' damage and factual claims, including depositions and document requests to key third party witnesses to the breach of contract claims, as well as the ERISA, breach of fiduciary duty and defamation claims. Defendants anticipate that they will take the deposition of third parties, including Osbelt's husband, Christopher Rodi and Peter Mei of Bingham McCutcheon, LLP..

E. Changes To Discovery Limitations

The Parties currently have no need to change discovery limitations.

F. Protective Order

In the state court action, the parties entered into a formal stipulated protective order and documents were exchanged which were classified confidential, subject to that protective order.

IV. CLASS CERTIFICATION

The parties do not request class certification.

V. RELIEF**A. Plaintiff:**

Plaintiff seeks damages for Defendants' breach of their agreement to purchase her interest in NEWN. The purchase price was over \$1.8 million. Plaintiff also seeks damages for Defendants' breach of duties owed to her as a minority member of NEWN and for punitive damages.

B. Defendants and Cross-Complainants:

Cross-Complainants seek damages resulting from Plaintiff's conduct in an amount still undergoing analysis and discovery, but which are expected to exceed \$500,000.

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1 **VI. ALTERNATIVE DISPUTE RESOLUTION**

2 While the case was under the jurisdiction of the state court, the parties underwent
3 mediation with Judge Eugene McDonald of JAMS in January 2008, which did not result in a
4 resolution of the dispute among the parties. The parties are amenable to working with Judge
5 McDonald further to resolve this matter.

6 **VI. CONSENT TO MAGISTRATE**

7 The Defendants and Cross-Complainants rejected the assignment of the case to Magistrate
8 Judge Larson.

9 **VII. NARROWING OF ISSUES.**

10 The parties are not yet in a position to stipulate to any narrowed facts. Defendants seek to
11 limit discovery of their financial condition for any purpose. Further, Defendants will seek to
12 bifurcate the issue of punitive damages.

13 **A. Disclosure Of Non-Party Interested Entities Or Persons.** The parties are not
14 aware of any other interested entities or persons and have filed certificates with the court
15 to this effect.

16 **VIII. EXPEDITED SCHEDULE**

17 Plaintiff contends that, should its motion for remand be denied, this case should be
18 handled on an expedited basis with streamlined procedures. This case had been set to commence
19 trial on May 12, 2008, less than four months from the date which Defendants removed the action.
20 Extensive discovery had taken place before and little further discovery is still required. As, such,
21 Plaintiff requests a trial date within four months with all other matters to be heard on an expedited
22 basis.

23 Defendant disagrees . Prior to the mediation , the parties engaged in discovery focused on
24 the parties' (depositions, documents). Extensive third party discovery (plus follow up party
25 discovery) needs to be conducted which will take approximately six (6) months to complete.

26 **IX. PRETRIAL CONFERENCE AND TRIAL SETTING**

27 **A. Length Of Trial**

28 Ten (10) days.

B. Proposed Pretrial Schedule**1. Plaintiff's Proposed Schedule**

Should Plaintiff's motion for remand be denied, she proposes the following expedited schedule

Deadline to file motion to add parties or amend pleadings	May 22, 2008
Exchange expert disclosures/reports	July 3, 2008
Completion of all fact discovery and last day to file any fact discovery motions	July 31, 2008
Deadline for completion of ADR process	July 3, 2008
Filing of Plaintiffs' motion for class certification	n/a
Exchange rebuttal expert disclosures/reports	July 18, 2008
Completion of all expert discovery and last day to file any expert discovery motions	July 31, 2008
Deadline for filing summary judgment motions	July 31, 2008
Final Pretrial Conference	August 15, 2008
Trial	September 2, 2008

2. Defendants' Proposed Schedule

Deadline to file motion to add parties or amend pleadings	June 16, 2008
Completion of all fact discovery	October 31, 2008
Deadline to file any fact discovery motions	November 30, 2008
Exchange expert disclosures/reports	December 15, 2008
Exchange rebuttal expert disclosures/reports	January 9, 2009
Completion of all expert discovery	January 30, 2009
Deadline to file any expert discovery motions	January 30, 2009
Deadline for completion of ADR process	February 15, 2009

1	Deadline for filing summary judgment motions	January 30, 2009
2		
3	Final Pretrial Conference	March 13, 2009
4	Trial	April 2009

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6 DATED: May 12, 2008

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9 By: /s/ William J. Goines

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Complainants David D. McDonald, Donna K.
12 McDonald, National Expert Witness Network
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14 DATED: May 12, 2008

COTCHETT, PITRE & MCCARTHY

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16 By: /s/ Sean Ponist

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